ambulances in emergency cases. *Boggs* v. *Jewel Tea Co.*, 266 Pa. 428, 109 A. 666 (1920); *Syck* v. *Duluth St. Ry. Co.*, 146 Minn. 118, 177 N.W. 944 (1920), *dictum*.

The conflict in those states where there is no provision for exemption seems to be based on whether the letter of the statute, rather than its spirit, is to control. Judge Zimmerman predicated his dissent in the principal case on the fact that it is hardly reasonable that a legislative body, in passing a statute or ordinance designed to suppress reckless driving, intended to restrict officers in the speed they might find necessary to use in arresting a violator of such statute or ordinance. He stated that a motorcycle policeman would be seriously handicapped in the performance of his duty to arrest speed violators, if he were held to an observance of speed and other traffic regulations, and if his violations thereof were to be denoted as negligence. In *Edberg* v. *Johnson*, *supra*, the court stated: "It would be an affront to the intelligence of the legislature to hold that, in enacting a statute designed to stop speeding, it intended to restrict peace officers to the prescribed speed limits when in pursuit of violators of the statute." The decision in the principal case, based on the strict letter of the statute, seems contrary to public convenience and necessity. But so long as the Ohio Courts adhere to their present position, the easiest way out of the situation seems to lie in amending the appropriate statutes and ordinances to provide for the exemption sought.

HARRY L. BROWN

VIOLATION OF STATUTE AS NEGLIGENCE PER SE — PROXIMATE CAUSE

The wagon of plaintiff's decedent was backed up to a platform of a cider mill on the north side of the highway in such a manner that the horses were standing on the highway with their heads and feet at or near the north curb line. It was at night and decedent's wagon had no lights. However, the highway was illuminated by lights of the cider mill. Defendant, proceeding westerly, negligently ran into the lead horse knocking him on the decedent who received injuries from which he later died. Held: that it was a question for the jury whether decedent's negligence, if any, was a contributory cause of the injury. *Miller* v. *Trummer, Admx.*, 50 Ohio App. 446, 198 N.E. 492, 2 Ohio Op. 118, 19 Abs. 130, Ohio Bar (Nov. 25, 1935).

Section 12614-3 of Motor Vehicles Chapter provides, "It shall be the duty of every person who operates, drives, or has upon any . . .

highway . . . a vehicle on wheels (at night) to have attached thereto a light or lights, etc. . . ."

In Ohio violation of a statute is negligence *per se*. *Schell* v. *Dubois*, 94 Ohio St. 93, 113 N.E. 664, L.R.A. 1917, 710, 13 N.C.C.A. 982 (1916); *Pennsylvania Rd. Co.* v. *Rusynik*, 117 Ohio St. 530, 159 N.E. 826, 56 A.L.R. 588 (1927). Violation of this statute, Sec. 12614-3 of General Code, has been held negligence *per se*. *Lima Used Car Exchange Co.* v. *Hemperly*, 120 Ohio St. 400, 166 N.E. 364 (1929); *Chesrown* v. *Bevier*, 101 Ohio St. 282, 128 N.E. 94 (1920); *Darby* v. *Jarrett*, 26 Ohio App. 194, 159 N.E. 858 (1927).

Since it appears from the facts in the principal case that the horses were standing on the shoulders of the highway with only their heads and perhaps their front feet extending over the paved road, there is some doubt as to whether the vehicle can properly be said to be on the highway and thus within the requirements of Section 12614-3.

Even if the decedent were negligent *per se* because of failing to comply with the standard set by statute, there remains the question whether such negligence contributed to the injury. *Schweinfurth* v. *Cleveland Ry. Co.*, 60 Ohio St. 215, 54 N.E. 89 (1899); *Napier* v. *Patterson*, 198 Iowa 257, 196 N.W. 73 (1923); *Martin v. Herzog*, 228 N.Y. 164, 126 N.E. 814 (1920). As Cardozo said in the last case, "We must be on our guard, however, against confusing the question of negligence with that of casual connection between the negligence and the injury. A defendant who travels without lights is not to pay damages for his fault unless the absence of lights is the cause of the disaster. A plaintiff who travels without them is not to forfeit the right to damages unless the absence of lights is at least a contributory cause of the disaster. To say that conduct is negligence is not to say that it is always contributory negligence."

So in the principal case the illumination of the highway by the lights from the cider mill might easily have made decendent's vehicle just as visible as though the lights required by the statute were present on the vehicle. If so, the absence of lights on the vehicle while constituting negligence would not be a proximate cause of injury, and would not bar the plaintiff from recovery.

It seems well settled that the absence of lights, in violation of statute or ordinance, must be found to be a proximate cause of the accident if it is to affect the result. *Yahnke* v. *Lange*, 168 Wis. 512, 170 N.W. 722 (1919); *Hanser* v. *Youngs*, 212 Mich. 508, 180 N.W. 409 (1920); *Kinsey* v. *Brugh*, 161 S.E. 41, (Va., 1931); *Pepper* v.

Walsworth, 6 La. App. 610 (1928); *Sexton* v. *Stiles*, 130 So. 821 (La. App., 1930).

Under the circumstances of the principal case the court could not well have taken the question of proximate cause from the jury.

JUSTIN H. FOLKERTH

TRUSTS

RULE AGAINST PERPETUITIES — EXECUTOR AS TRUSTEE TO MAINTAIN GRAVES — GIFT FOR CHARITABLE PURPOSE

The testator by his will directed "that my executors . . . hold in trust the sum of $1500 and with the income thereof provide for the decoration of the graves of my parents . . . and also my own grave . . . executors to have the right at any time they desire to no longer act as trustees . . . to make arrangements with the Spring Grove Cemetery Association to continue the decoration of the above enumerated graves . . ." The question presented was whether this case was a chancery case and was appealable. This depended upon whether the will created a trust. The Court of Appeals, First District, held that there was no trust, in view of the fact that no cestui is named, but rather an intent on the part of the testator to create a power attached to the executorship. *Whiting* v. *Bertram*, 51 Ohio App. 40, 3 Ohio Op. 292, 199 N.E. 367, 19 Ohio Abs. 363 (1935).

It is an established principle of trust law that no trust can exist without a cestui. "A trust without a cestui is like an agent without a principal or a husband without a wife." Smith, "Honorary Trusts and the Rule Against Perpetuities," 30 Col. L. Rev. 60 (1930). Some courts have held that the cestui must be a living person, one who can enforce the trust. *Festorazzi* v. *St. Joseph's Church*, 104 Ala. 327, 25 L.R.A. 360 (1893). Where there is no such living cestui, "it would seem that they (the trusts) could be attacked on this ground in all cases." 1 Bogert, on Trusts, page 484. But see, Gray, "Rule Against Perpetuities" 3rd Ed. sec. 828.

A study of the cases, however, reveals two exceptions to this rule. The first is the classification of trusts known as honorary or imperfect trusts. This group involves trusts for the erection of monuments, tombs, mausoleums, and upkeep of graves for a limited time. The cases warrant the following general conclusions:

(a) Both the English and American courts have held overwhelmingly that a bequest for the erection of a monument, tomb, or gravestone